IN THE SUPREME COURT OF IOWA

NO. 11-2022

DANNY HOMAN, WILLIAM A. DOTZLER, Jr., BRUCE HUNTER, DAVID JACOBY, KIRSTEN RUNNING-MARQUARDT and DARYL BEALL,

Plaintiffs-Appellees/Cross-Appellants,

v.

TERRY E. BRANSTAD, Governor of the State of Iowa,

Defendant-Appellant/Cross-Appellee.

On Appeal from the District Court for Polk County

The Honorable Brad McCall

FINAL BRIEF AND REPLY OF APPELLEES/CROSS-APPELLANTS DANNY HOMAN, WILLIAM A. DOTZLER, Jr., BRUCE HUNTER, DAVID JACOBY, KIRSTEN RUNNING-MARQUARDT and DARYL BEALL

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ROUTING STATEMENT

This Court has already decided to retain this case, and granted the motion to expedite due to the constitutional questions involved that are of broad public importance requiring prompt determination. *See* Iowa R. App. P. 6.1101(2)(a), (d). Oral argument has been scheduled for February 21, 2012.

STATEMENT OF THE CASE

Senate File 517 (SF 517), also known as the Economic Development Appropriations Bill, is an appropriations bill that originated in the Economic Development Joint Appropriations Subcommittee. On June 27, 2011, SF 517 was passed by the 84th General Assembly, and the bill was submitted to the Governor on June 30, 2011, which is the same day that the 84th General Assembly adjourned *sine die.* On July 27, 2011, Governor Branstad deposited SF 517 with item vetoes and a transmittal letter with the Secretary of State.

The title of SF 517 states that it is:

> An Act relating to and making appropriations to the department of cultural affairs, the department of economic development, certain board of regents institutions, the department of workforce development, the Iowa finance authority, and the public employment relations board, and addressing related matters including tax credits and including immediate effective date and retroactive applicability provisions.

App. 7.

Substantively, SF 517 appropriates a total of $36.2 million from the General Fund of the State of Iowa for fiscal year 2012 and $18.1 million from the General Fund for fiscal year 2013. *Id.* In Fiscal Year 2012, four different sources of revenue were appropriated for the operation of workforce

development field offices. From the General Fund in Section 15(3)(a-b), $8,660,480 was appropriated for the operation of workforce development field offices. App. 16. From the Employment Security Contingency Fund in Section 17, $1, 217,084 was appropriated for the operation of field offices. *Id.* at 17. From the Unemployment Compensation Reserve Fund in Section 18, $4,238,260 was appropriated for the operation of field offices. *Id.* at 18. Governor Branstad vetoed a condition on these appropriations (Section 15(3)(c)) which required Iowa Workforce Development to keep open the same number of field offices that were in operation as of January 1, 2009. *Id.* at 16. However, Governor Branstad did not veto the three appropriations noted above.

There was also a fourth revenue source for Fiscal Year 2012; unobligated funds from the Save Our Small Business fund in Section 26 were appropriated for the operation of field offices. *Id.* at 19-20. This appropriation was only available for Fiscal Year 2012. Governor Branstad vetoed Section 26 in its entirety, which is the only appropriation that was vetoed in SF 517. *Id.* As a result, it is not at issue in this case.

In Fiscal Year 2013, three difference sources of revenue were appropriated for the operation of workforce development field offices. From the General Fund, $4,330,240 was appropriated for the operation of

workforce development field offices in Section 61(b). *Id.* at 34. From the Employment Security Contingency Fund, $608,542 was appropriated for the operation of field offices in Section 63. *Id.* at 36. From the Unemployment Compensation Reserve Fund, $1,200,000 was appropriated for the operation of field offices in Section 64. *Id.* No appropriations were vetoed for Fiscal Year 2013. *See id.*

Governor Branstad item vetoed a condition on these appropriations which required Iowa Workforce Development to keep open the same number of field offices as were in operation as of January 1, 2009. *Id.* at 16, 35.

Governor Branstad item vetoed a condition on workforce field offices which included definitions of "field office" and "workforce development center". *Id* at 17, 35. These definitions were meant to define a field office as a physical presence and not an electronic one. These definitions applied only to this Act and were vetoed for Fiscal Year 2012 and Fiscal Year 2013. *Id.*

Governor Branstad item vetoed a restriction which prohibits Department of Workforce Development from using any appropriated funds

for the purposes of the National Career Readiness Certificate Program. *Id.* at 18, 36.

The Governor only vetoed one appropriation in SF 517 for Fiscal Year 2012, and he did not veto any appropriations for Fiscal Year 2013. The vetoed 2012 appropriation was one of four appropriations to the Department of Workforce Development for the operation of field offices.

In effort to remedy the improper item vetoes, Appellees filed a petition in Polk County District Court requesting that the attempted vetoes of SF 517 be declared to have no force or effect. App. at 1. Appellees and Appellant both filed for summary judgment, and a hearing was held before Judge Brad McCall. He issued a decision finding Section 15(3)(c) to be a qualification, Section 15(5) to be a condition, and Section 20 a rider. App. 54, 57, 59. Therefore he held that Sections 15(3)(c) and 15(5) were only parts of an item, and therefore not able to be vetoed without their accompanying appropriations, and held that the Section 20 veto was properly executed. The ruling ordered that the attempted vetoes were a nullity, and the bill became law as if the vetoes had not been executed. App. 61. The district court stayed the proceedings, pending this appeal.

STATEMENT OF THE FACTS

The statement of the case essentially outlines the case's facts, as the Appellant correctly points out that cases dealing with the constitutionality of a governor's veto are essentially limited to a legal analysis.

A. This case has arisen due to a constitutional issue, not a political one.

Appellant asserts that this case is a political spat, and he puts forth his policy reasons for using his veto power illegally as justification for doing so. *See* App. Brief at 9, 12, 13. While the issue of workforce development center closures and funding may have arisen due to a political dispute, this case would not be before this Court if the issue was purely political in nature. This case is about ensuring that the Governor acts in accordance with the Constitution of Iowa. As this Court stated in *Rush v. Ray,* "Our opinion concerning the wisdom of either the original enactments or the vetoes does not enter into our judicial evaluation of the legality of the Governor's action." *Rush v. Ray,* 362 N.W.2d 479, 480 (Iowa 1985).

B. A qualification or restriction on an appropriation may be vetoed only if the appropriate appropriation is also vetoed.

The case at hand revolves around whether the item vetoed portions of Senate File 517 (SF 517) were vetoed constitutionally. The Iowa

Constitution empowers the governor with three types of vetoes: the general, the pocket and the line item. *See* Iowa Const. Art. III §16. At issue in Senate File 517 (SF 517) is the line item veto. "The fundamental prerequisite for the proper exercise of the item veto power is that the bill to be item vetoed is an appropriation bill." *Rants v. Vilsack*, 684 N.W.2d 193, 203 (Iowa 2004). An appropriation bill is defined as "a measure before a legislative body authorizing an expenditure of public funds and stipulating the amount, the manner in which that amount is to be expended, the purpose of the various items of expenditure and any other matters germane to the appropriation." *Welden v. Ray*, 229 N.W.2d 706, 713 (Iowa 1975) (citing Note, Don Muyskens, 18 Drake L. Rev. 245, 249 (1968)). The title of SF 517 states that it is:

> An Act relating to and making appropriations to the Department of Cultural Affairs, the Department of Economic Development, certain Board of Regents institutions, the Department of Workforce Development, the Iowa Finance Authority, and the Public Employment Relations Board, and addressing related matters including tax credits and including immediate effective date and retroactive applicability provisions.

App. 7.

There is no dispute that SF 517 is an appropriations bill, therefore the governor has the ability to utilize the item veto. *See* Iowa Const. Art. III, §

16 (providing that the governor "may disapprove any item of an appropriation bill").

The item veto power hinges on the definition of "item." In *Turner v. Iowa State Highway Comm'n*, this Court acknowledged that the governor may constitutionally item veto nearly any item in an appropriation bill regardless of it being a monetary allocation. 186 N.W.2d 141, 149 (Iowa 1971). Consequently, as stated by this Court in *Rants*, "[t]his broad definition of an item requires a difficult calculation to ensure a proper balance between the executive and legislative branches." 684 N.W.2d at 205. In effort to ensure that balance, this Court has held that "the Governor may not selectively strike words and phrases from 'conditions inextricably linked to an appropriation,' and, on the other hand, the legislature may not block [an] item veto by attaching 'unrelated riders' to an appropriation." *Id.* (quoting *Welsh v. Branstad*, 470 N.W.2d 644, 649 (Iowa 1991)). This court defined "condition" and "rider" in *Colton v. Branstad*, 372 N.W.2d 184, 189, 191 (Iowa 1985). A condition is "a provision in a bill that limits the use to which an appropriation may be put", while a rider is "an unrelated substantive piece of legislation incorporated in the appropriation bill." *Id.* This Court also has noted in its opinions that "condition" is synonymous with "proviso", "restriction", "qualification", and "limitation." *Welsh,* 470

N.W.2d at 649-50. A test to decide if an item of legislation in an appropriations bill is a condition or a rider was articulated in *Welsh:*

> ...the fundamental test for determining the validity of an item veto under article III, section 16...is whether the vetoed portion of the legislation may be taken out of a bill without affecting its other purposes and provisions. It is something that can be lifted bodily from it rather than cut out. No damage can be done to the surrounding legislative tissue, nor should any scar tissue result therefrom.

Id. at 648. This Court has articulated this test further by stating:

> However if the removal of the provision would permit the governor to "legislate by striking qualifications [on appropriations] in a manner which distorts legislative intent" or to "divert money appropriated by the legislature for one purpose so that it may be used for another," we consider it an inseparable statement of the legislature's will, impervious to an item veto unless both the condition and the appropriation to which it is related are item vetoed together.

Rush v. Ray, 362 N.W.2d 480, 482 (Iowa 1985).

However, including a legislatively-imposed qualification or restriction in a bill does not insulate it from the governor's item veto: "if the Governor desires to veto a legislatively-imposed qualification upon an appropriation, he must veto the accompanying appropriation as well." *Welden,* 229 N.W.2d at 713. The effect of item vetoing a condition without its appropriation was described in a law review article and excerpted in *Welden*:

> If any part [of an appropriations bill] could be disapproved, the residue which would become law might be something not intended by the legislature and against the will of the majority of each house. It is obvious that the item veto power does not contemplate striking out conditions and restrictions alone as items, for that would be affirmative legislation, whereas the governor's veto power is a strictly negative power, not a creative power.

Id. (citing Note, Don Muyskens, 18 Drake L. Review 245, 249-50 (1968)(citations omitted)). Allowing Appellant to veto only the conditions of SF 517 and to keep the appropriations leaves a residual law unintended by the legislature and a result unintended by the legislature when the item veto power was given to the governor in 1968.

C. *Turner* held that there is standing for legislators as citizens and taxpayers to bring an item veto case.

In declaring this case to be merely a political dispute, Appellant asserts that Appellees do not have the required harm to bring this case. App. Brief 20-21. Appellant's brief is the first time this issue has been raised. Historically, item veto cases have been brought by members of the legislature, as taxpayers, citizens, residents, and legislators of the state of Iowa. *See Welden v. Ray,* 229 N.W.2d 706 (Iowa 1975); *Rush v. Ray,* 362 N.W.2d 479 (Iowa 1985); *Colton v. Branstad,* 372 N.W.2d 184 (Iowa 1985); *Junkins v. Branstad (I),* 421 N.W.2d 130 (Iowa 1988); *Junkins v. Branstad*

(II), 448 N.W.2d 480 (Iowa 1989); *Welsh v. Branstad,* 470 N.W.2d 644 (Iowa 1991); *Rants v. Vilsack*, 684 N.W.2d 193 (Iowa 2004). As was settled in *Turner*, legislators, as citizens and taxpayers, have the necessary standing to bring an item veto case. *Turner,* 186 N.W.2d at 144-148.

ARGUMENT

I. SF 517 SECTION 15(3)(c), THE OFFICE CLOSURE PROVISION, IS A CONDITION ON AN APPROPRIATION.

Appellees agree with Appellant's statements on error preservation, scope of review and standard of review.

A. Appellant vetoed only the condition and not the accompanying appropriation, making it an improper item veto under *Welden.*

SF 517, Section 15(3) expressly states:

3. WORKFORCE DEVELOPMENT OPERATIONS

a. For the operation of field offices, the workforce development board, and for not more than the following full-time equivalent positions: $8,671,352. FTEs 130.00
b. Of the moneys appropriated in paragraph "a" of this subsection, the department shall allocate $8,660,480 for the operation of field offices.
c. The department shall not reduce the number of field offices being operated as of January 1, 2009.

App. 16.

Appellant item vetoed (c), leaving $8,660,480 unrestricted. In writing Section 3, the legislature decided how much money would be spent

for the operation of field offices and then restricted how many field offices would operate with that money.

In defending his improper veto, Appellant continues to rely on *Turner*, the first item veto case decided in Iowa. *Turner v. Iowa State Highway Comm.*, 186 N.W.2d 141 (Iowa 1971). His heavy reliance ignores the Iowa cases that have come since, the cases that have continued to shape the item veto discussion. As shown in his district court brief, oral argument, and again in his appellant brief, Appellant fails to acknowledge the difference between *Turner* and the case at hand. Under *Welden*, a condition may be item vetoed only if the accompanying appropriated money is also vetoed. *Welden v. Ray,* 229 N.W.2d 706 (Iowa 1975). In *Turner,* there was no appropriated money for the vetoed provision. *See Turner*, 186 N.W.2d 141. The provision at issue in *Turner,* Section 5, mandated that the permanent resident engineers' offices not be moved. *Id.* at 149. No money appropriation accompanied this. Intuitively there wouldn't be; money wouldn't be given for *not* moving something. *Welden v. Ray* offers further analysis of Section 5: "The appropriation (in the bill) did not appear dependent upon inclusion of s 5 in the bill. We held s 5 separate and severable and subject to separate veto under the Governor's authority to veto part of an appropriation bill." *Welden,* 229 N.W.2d at 714. The

appropriation in the *Turner* bill was not dependent upon the inclusion of section 5 because section 5 required no money to be carried out.

Here, over $14 million[1] was appropriated for the 2012 fiscal year to keep a certain number of workforce development centers open and running, the same number of centers that were operating on January 1, 2009. *See* App. 1. This court has repeatedly held that a condition "may be vetoed *only* if the appropriation accompanying it is vetoed as well." *Rants v. Vilsack,* 684 N.W.2d 193, 206 (Iowa 2004) (citing *Colton v. Branstad,* 372 N.W.2d 184, 189 (Iowa 2004); *Welden v. Ray,* 229 N.W.2d 706, 709 (Iowa 1975)). Appellant item vetoed Section 15(3)(c), the restriction on the appropriation, and only one of the four appropriations dedicated to workforce development field offices. *See* App. 1. To have correctly item vetoed the Section 15(3)(c) restriction, Appellant should have also all appropriations directed to

[1]*See* S.F. 517 Section 15(3)(b) (appropriating $8,660, 480 to be used for field offices); Section 17(1) (appropriating $1,217,084 to be used for field offices from the special employment security contingency fund); Section 18 (appropriating $4,238,260 to be used for field offices from unemployment compensation reserve fund); Section 26 (amendment to the Iowa Code 2011 re-appropriating unobligated money from the general fund to the department of workforce development for the purpose of providing funding to field offices)(note that the same provisions with different appropriation amounts in Division IV of the bill). The 2013 appropriations of Division IV carry similar language with different appropriation amounts, with the exception of Section 26 which appears only in the 2012 appropriations of Division I.

the field offices.[2] The district court easily saw that subsection (c) "specifically identified the appropriation to which the limiting language was intended to apply: the appropriation for the operation of field offices", realizing that "[h]ad the legislature not placed this limitation on the number of field offices it was financing, it may have allocated less money for their operation." App.54.

B. The *Turner* rule has been clarified by subsequent item veto decisions: "magic words" are not necessary.

Appellant is correct in his declaration that *Turner* has been on the books since it was decided in 1971. However in his assertion that *stare decisis* requires that *Turner* be followed, he ignores the item veto cases that have come since *Turner*, which have served to modify and clarify item veto law in Iowa. *See Welden v. Ray,* 229 N.W.2d 706 (Iowa 1975); *Rush v. Ray,* 362 N.W.2d 479 (Iowa 1985); *Colton v. Branstad,* 372 N.W.2d 184 (Iowa 1985); *Junkins v. Branstad (I),*421 N.W.2d 130 (Iowa 1988); *Junkins v. Branstad (II),* 448 N.W.2d 480 (Iowa 1989); *Welsh v. Branstad,* 470 N.W.2d 644 (Iowa 1991); *Rants v. Vilsack*, 684 N.W.2d 193 (Iowa 2004). Appellant complains that perpetual uncertainty would come from following the district court's rule. App. Brief 20. He also notes that the Governor of Iowa

[2] Appellant correctly vetoed Section 26, but left Section 15(3)(b), Section 17 and Section 18 intact.

"reviews hundreds of appropriations within a very short period" and such review "should not require a team of wordsmiths who can analyze 'context' and soothsayers who can read legislators' minds." *Id.* This assertion is troublesome, as it appears that Appellant is suggesting that the Iowa Governor can take no more than a brief moment to review the State's budget. If Appellant could afford no more than a glance at SF 517, then it is confusing why Section 20 was item vetoed, as it is clearly labeled "APPROPRIATIONS RESTRICTED", definite notice that that section contained a restriction upon an appropriation that could not be vetoed without also vetoing the accompanying appropriation. There was no effort to hide the conditions and restrictions, but rather the legislature went out of its way to emphasize them.

In *Welden,* this Court found the clauses at issue to be "integral parts of the appropriations themselves," and therefore were determined to be qualifications placed upon the appropriations. *Welden*, 220 N.W.2d at 714-715. In *Ray,* this Court determined that the clause at issue "distorted the obvious legislative intent that the funds only be spent for the appropriated purposes and created additional ways the funds might be spent." *Rush v. Ray*, 362 N.W.2d 479, 483 (Iowa 1985). In *Turner*, this Court examined the clause at issue and found it obvious that it did not " 'qualify an

appropriation' or 'direct the method of its use'" and was "in no sense a condition, qualification or proviso which limit[ed] the expenditure of any of the funds appropriated by House File 823." *Turner,* 186 N.W.2d 141, 150 (Iowa 1971). In fact, *Turner*'s analysis of the clause at issue is as follows: "[h]ad [Section 5's] purpose as a condition, restriction or proviso been accomplished by specific draftsmanship, as was Section 4 of the same Act, then of course it could not have been said Section 5 as not germane to the general subject matter of the bill itself"; the decision did not ever say that the express language is the only way to condition or restrict an appropriation, as Appellant suggests in his brief. *Id.* at 153; App. Brief at 17.

In contrast to Appellant's stated version of the *Turner* rule, *Rush v. Ray* references the "severability test" that was announced in *Turner* "to determine whether language constitutes an item." 362 N.W.2d 479, 482 (Iowa 1985). Each time that the item veto issue has been considered by this Court, the "test" used has been stated slightly differently, but this Court has not stated that express language must be used in order to condition or restrict an appropriation. In noting that conditions must be identified on a case-by-case basis, the district court ruled that, "No magic language is necessary. However, if the legislature intends to attach a condition to an appropriation they must make their intent clear." App. 49. No plain reading of SF 517

could at all deny the intent of the legislature that its appropriation of $8,660,480 was made in order to keep all workforce development field offices open. No matter if the *Welden, Ray* or any other item veto test is used here, the result is clear: Appellant illegally exercised his item veto power by not vetoing the appropriation in conjunction with the conditions and restrictions.

II. SF 517 SECTION 15(5), THE DEFINITION PROVISION, IS A RESTRICTION ON AN APPROPRIATION.

Appellees agree with Appellant's statements on error preservation, scope of review and standard of review.

"If a governor may veto a legislatively-imposed qualification upon an appropriation but let the appropriation itself stand, he may alter and thus, in fact legislate-notwithstanding that our constitution states, 'The Legislative authority of this State shall be vested in a General Assembly.'" *Welden v. Ray*, 229 N.W.2d 706, 710 (Iowa 1975) (citing Iowa Const. Art. III, § 1). By imposing conditions and restrictions on appropriations, the legislature was within its proper authority. *See* id. By illegally item-vetoing the legislature's definitions of "field office" and "workforce development center," Appellant has crossed over from the limited item veto power and

performed a legislative function, despite the Constitution's reservation of that power for the legislature. *See* id.

SF 517, Section 15(5) states:

> 5. DEFINITIONS
>
> For purposes of this section:
>
> a. "Field office" means a satellite office of a workforce development center through which the workforce development center maintains a physical presence in a county as described in section 84B.2. For purposes of this paragraph, a workforce development center maintains a physical presence in a county if the center employs a staff person. "Field office" does not include the presence of a workforce development center maintained by electronic means.
> b. "Workforce development center" means a center at which state and federal employment and training programs are colocated and at which services are provided at a local level as described in section 84B.1.

App. 17.

The reason the legislature chose to include these definitions is clear upon reading Governor Branstad's transmittal letter. App. 39. His item veto of Section 15(5) is due to a forthcoming technological plan. App. 39. The definition section detailed, in no uncertain terms, exactly how the workforce development field office appropriations were to be utilized. By vetoing the definitions, Appellant greatly enlarged what would qualify as a "field office" and/or a "workforce development center." SF 517 contained several

appropriations to workforce development "for the operation of field offices." *See* S.F. 517 Section 15(3)(b) (appropriating $8,660, 480 to be used for field offices); Section 17(1) (appropriating $1,217,084 to be used for field offices from the special employment security contingency fund); Section 18 (appropriating $4,238,260 to be used for field offices from unemployment compensation reserve fund); Section 26[3] (amendment to the Iowa Code 2011 re-appropriating unobligated money from the general fund to the department of workforce development for the purpose of providing funding to field offices)(note that the same provisions with different appropriation amounts appear in Division IV of the bill).

Finding the definitions of "field office" and "workforce development center" to be conditions, the district court opined: "Read in the context in which they were enacted, the legislative limitations embodied in the definitions contained in the vetoed provisions were clearly intended by the legislature to apply directly to the funds appropriated 'for the operation of field offices.' With the use of the phrase 'in this section' the legislature evinced an intent to place restrictions on the use of the appropriations it made earlier in the section." App. 56. This decision is further evidenced by

[3] Section 26 was the only field office appropriation that was correctly item vetoed because the monetary appropriation was vetoed along with the condition, in accordance with *Welden v. Ray,* 229 N.W.2d 706 (Iowa 1975). As a correctly executed item veto, it is not a subject of this lawsuit.

the use of the words "for purposes of this section" in both Sections 15(5) and 61(5). App. 17, 35.

With the limiting definition of the terms "field office" and "workforce development center" no longer affecting the department of workforce development's appropriations, the appropriations could be used to fund any definition of "field office." This situation was described in *Welden*, taken from a Drake Law Review article, as cited earlier in this brief:

> If any part [of an appropriation bill] could be disapproved, the residue which would become law might be something not intended by the legislature and against the will of the majority of each house. It is obvious that the item veto power does not contemplate striking out conditions and restrictions alone as items, for that would be affirmative legislation, whereas the governor's veto power is a strictly negative power, not a creative power.

Welden, 229 N.W.2d at 713 (citing Note, Don Muyskens, 18 Drake Law Review, 245, 249-250 (1968) (citations omitted)).

When the legislature consented to the appropriations for the operations of field offices, it consented with the restrictions placed upon the money. Appellant cannot nullify the restrictions placed upon the money because in doing so he would be affirmatively legislating, utilizing a power that is not his to use. *See* Iowa Const. Art. III,§1

III. THE DISTRICT COURT APPLIED THE PROPER REMEDY.

Appellees agree with Appellant's statements on error preservation, scope of review and standard of review.

The district court applied the correct remedy for Appellant's improper item vetoes when it ordered that SF 517 became law as if Appellant had not exercised the invalid item vetoes. App. 61. The Iowa Constitution allows the governor to "approve appropriation bills in whole or in part." Iowa Const., Art. III § 16. Appellant approved SF 517 in its entirety, except for those provisions that he item vetoed. App. 39. However, his attempts at item vetoes expanded the reach of the bill, creating affirmative legislation, which invaded the power of the legislature. *See* Iowa Const., Art. III, § 1 (declaring that legislative authority rests with the General Assembly). As the district court stated, "his attempts at those item vetoes in excess of his authority were a nullity," therefore the bill became law as if he had not exercised the invalid vetoes. App. 61.

In opposing the district court decision, Appellant provides a different outcome for this case: "[i]f the governor impermissibly vetoes just a piece or segment of an item, then the rest of that item—but only that item—is deemed vetoed by operation of law." App. Brief, 28. No authority is given

for such a declaration, likely because this remedy is not dictated by case law. This remedy would result a veto of over $14 million for workforce development in 2012 alone. *See* App. 7. This was not the likely intent of the impermissible vetoes, and accepting it as the remedy here would create a massive underfunding for this agency, and any future entities that will encounter an impermissible veto in their future budgets. The district court decision provides the most logical solution to this issue, and the decision should be upheld.

IV. *Cross-Appeal Issue:* SF 517 SECTION 20, THE NATIONAL CAREER READINESS CERTIFICATE PROGRAM PROVISION, IS A CONDITION ON AN APPROPRIATION.

A. Section 20 contains the conditional language of *Turner*.

Section 20, and its 2013 counterpart Section 66, state:

> Sec. 20 (and 66). APPROPRIATIONS RESTRICTED.
>
> The department of workforce development shall not use any of the moneys appropriated in this division of this Act for purposes of the national career readiness certificate program.

App. 18, 36.

The similarity between these provisions and that which was highlighted in *Turner* cannot help but be noted. The provision at issue in *Turner* was Section 5 of HF 823. *Turner,* 186 N.W.2d 141. In deciding that Section 5

was *not* a condition, the Court focused on a provision that it *did* view to be a condition-Section 4 of the same bill. *Id.* at 150. Section 4 stated:

"No moneys appropriated by this act shall be used for capital improvements, but may be used for overtime pay of employees involved in technical trades."

Id.

Regarding Section 4, the Court commented, "Had such language as used in section 4 been employed in section 5 we are impelled to view that section 5 would have in such case been a proviso or condition upon the expenditure of the funds appropriated, but lacking such phraseology it obviously is not." *Id.* The restrictive language of Section 4 from *Turner* matches the restrictive language of SF 517 Section 20. *Compare id. with* App. 18. Because this Court declared *Turner*'s section 4 language to be a condition, SF 517 Section 20 must also be a condition.

It should also be noted that Section 20 is entitled, "APPROPRIATIONS RESTRICTED", a title that clearly notes the legislature's intent to restrict the appropriations to workforce development. In his brief, Appellant worries over improperly giving effect to an unexpressed intent of the legislature. *See* App. Brief, 18-19. The title of Section 20 could not express the legislature's intent any more clearly—workforce development is to be

restricted from using its appropriations for the National Career Readiness Certificate program.

B. Section 20 is narrowly tailored so as to constitute a restriction on an appropriation.

Finding it to be overbroad, the district court incorrectly found that Section 20 was a rider. App. 59. Section 20 ensured that no workforce development money would be spent to administer the National Career Readiness Certificate program. The Iowa program is conducted by workforce development, thereby restricting the provision to appropriations made to workforce development. The legislature wrote Section 20 to be all encompassing, to ensure that *no* money appropriated to workforce development would be used for the program. It seems as though the legislature may have been worried that the department would move money appropriated to other branches of the department around to fund the program. Because it was its clear intent that the program not be funded by this bill or that the department internally reallocate the money, the legislature put the restriction on all money appropriated to the department. Section 20 was as narrowly tailored as possible to achieve its intended effect; the district court erred in deciding that it was overly broad, and thus that the section was a rider. As *Turner* clearly indicates, Section 20 is a

condition on the appropriations to workforce development. *See Turner,* 146 N.W.2d at 150.

V. *Reply to Cross-Appeal issue:* SF 517 SECTION 20, THE NATIONAL CAREER READINESS CERTIFICATE PROGRAM PROVISION, IS A CONDITION ON AN APPROPRIATION.

A. Subsequent item veto cases have modified and clarified *Turner.*

Appellant contradicts himself in arguing against overturning the district court rule with respect to Sections 20 and 66. Appellees asserted that since the *Turner* case was decided in 1968, the decision has been clarified and modified by the subsequent item veto cases. *Supra* p. 15. To this, Appellant says, "That is simply not true." App. Rep. Brief 1. However in his resistance to this appeal for Section 20, he writes, "...the Supreme Court later clarified that the legislature cannot create a condition simply by labeling it as one." App. Rep. Brief 13. *Turner* was the first item veto case, decided shortly after the item veto provision was adopted into the Iowa Constitution. Since that first case, other item veto cases have been decided, and these cases have clarified how to identify conditions and restrictions in appropriation bills. *See Welden v. Ray,* 229 N.W.2d 706 (Iowa 1975); *Rush v. Ray,* 362 N.W.2d 479 (Iowa 1985); *Colton v. Branstad,* 372 N.W.2d 184 (Iowa 1985); *Junkins v. Branstad (I),* 421 N.W.2d 130 (Iowa 1988); *Junkins*

v. Branstad (II), 448 N.W.2d 480 (Iowa 1989); *Welsh v. Branstad,* 470 N.W.2d 644 (Iowa 1991); *Rants v. Vilsack*, 684 N.W.2d 193 (Iowa 2004). These cases have discussed how a condition would "qualify an appropriation" or "direct the method of [an appropriation's] use." *Turner,* 186 N.W.2d at 150. As demonstrated, Sections 20 and 66 both qualify the appropriations to the department of workforce development and direct that method of the department's use of funds away from the national career readiness certificate program, rendering Sections 20 and 66 conditions.

B. Under *Turner* and *Colton*, Sections 20 and 66 are conditions.

Appellant declares that Appellees have overlooked two things in noting the similarity between the language of Section 4 from the bill in *Turner* and the language of Sections 20 and 66: that the labeling of *Turner*'s section 4 was dictum and that *Colton* held that a condition is not created through labeling. App. Reply Brief 13. However in making these points, Appellant has not proven that Sections 20 and 66 are not conditions. While the *Turner* discussion of Section 4 may have been dictum, it remains the clearest example of what this Court's idea of conditional language is. *See Turner,* 186 N.W.2d at 150. With regard to dictum, the United States Supreme Court has stated that, "[v]irtually every one of the Court's opinions announcing a new application of a constitutional principle contains some

explanatory language that is intended to provide guidance to lawyers and judges in future cases." *Carey v. Musladin,* 549 U.S. 70, 79 (2006)(Stevens, J., concurring). Additionally, "[a]s a general rule, the principle of *stare decisis* directs us to adhere not only to the holdings of our prior cases, but also to their explications of the governing rules of law." *County of Allegheny v. American Civil Liberties Union, Greater Pittsburgh Chapter,* 492 U.S. 573, 668(1989)(Kennedy, J., concurring in part, dissenting in part). Therefore even if this Court's instruction in *Turner* is determined to be dictum, there is nonetheless still valuable guidance to be gained from the dictum. The district court agreed that Sections 20 and 66 do contain the necessary conditional language: "...this provision [Section 20] places explicit qualifications and limitations on the use of the appropriated funds..." App. 59. In fact even Appellant agrees that conditional language was used: "Plaintiffs therefore challenged the veto of two additional provisions in Senate File 517 that *do* contain express "condition" language..." App. Reply Brief 9. In regard to Appellant's second point, Appellees agree that a condition is not created though labeling. The provision at issue in *Colton* stated in relevant part: "As a condition of the appropriation ..." *Colton,* 372 N.W. at 186. The provision contained no other conditional language. In *Colton* this Court decided that the label was

not enough to make the provision a condition; the provision also needed to have a sufficient nexus to the appropriation in order to be a condition of that appropriation. *Id.* at 192. Because in this case, the program restriction applies only to the department that administers the program, sections 20 and 66 contain *both* a label and a sufficient nexus to the appropriation, rendering them conditions on an appropriation.

C. A "sufficient relationship" exists between Section 20 and the appropriations to the department of workforce development.

Appellant contends that the Section 20 and 66 restrictions apply to every appropriation in Divisions I and IV, thereby creating a "super item." App. Reply Brief 10-11. As the appropriations in Divisions I and IV cover various agencies and institutions, this conclusion is not practical. On this point, the district court concluded, "In fact, the condition related to the national career readiness certificate program applies only to funds in the hands of the Department of Workforce Development, the agency that utilized the program." App. 58. Indeed, because Divisions I and IV contain several appropriations to workforce development, placing the restriction as its own section requires that the restriction apply to each workforce appropriation, in attempt to prevent an internal reallocation. Because, as the district court pointed out, the national career readiness certificate restriction applies only to the department of workforce development, there is a

"sufficient relationship to the appropriation to which it is attached," a requirement under *Colton,* 372 N.W.2d at 192. The department of workforce development is "the agency that utilized the program," (App. 58) and therefore a sufficient connection between the program and the appropriations to the department exist. Because this connection is present, sections 20 and 66 are conditions on appropriations, not riders, and therefore Governor Branstad's item veto of them was impermissible.

CONCLUSION

Appellees request that this Court uphold the decision of the district court that Appellant Governor Branstad's attempted item vetoes of Division I, Section 15, paragraph 3(c), Division IV, Section 61, paragraph 3(c), Division I, Section 15, paragraph 5, and Division IV, Section 61, paragraph 5 were ineffective and his attempts were a nullity. Appellees also request that this Court find Appellant Governor Branstad's attempted vetoes of Division I, Section 20 and Division IV, Section 66 to also be ineffective, rendering his attempts a nullity. The Appellees request that this case be remanded with instructions to enter judgment accordingly.

Respectfully submitted,

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REQUEST FOR ORAL ARGUMENT

This case has already been set for oral argument on Wednesday, February 21, 2012 at 7 pm.

ATTORNEYS' COST CERTIFICATE

The true and actual amount paid for printing the foregoing Appellee's Final Brief was $154.33

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1), because this brief contains 7,465 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14 point font.

Mark T. Hedberg, AT0003285

2/6/12
Date

CERTIFICATE OF FILING

The undersigned hereby certifies that he or a person acting on his behalf will file the attached Brief by hand delivering eighteen copies to the Clerk of the Iowa Supreme Court, Iowa Judicial Branch Building, 1111 E. Court Avenue, Des Moines, Iowa 50319 on February 6, 2012.

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PROOF OF SERVICE

I certify that on February 6, 2012, I emailed and mailed a copy of this document to the attorneys of record who are listed below.

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